

**UNITED STATES BANKRUPTCY COURT
DISTRICT OF MINNESOTA**

In re:

Chapter 11 Bankruptcy

Intrepid U.S.A., Inc.,
and Jointly Administered Cases,

Case No. 04-40416-NCD

Case No. 04-40462-NCD

Case No. 04-40418-NCD

Debtors.

Case Nos. 04-41924 – 04-41988-NCD

**LIMITED OBJECTION OF CAPITALSOURCE FINANCE LLC TO MOTION FOR
ORDER AUTHORIZING DEBTORS TO PAY DUE DILIGENCE FEES TO
POTENTIAL LENDERS FOR RECAPITALIZATION OR BUYERS FOR SALE**

CapitalSource Finance LLC (“CapitalSource Finance”), the DIP lender to the above-captioned debtors and debtors-in-possession (collectively, the “Debtors”), submits this limited objection (the “Limited Objection”) to the Debtors’ Motion Authorizing Debtors to Pay Due Diligence Fees to Potential Lenders for Recapitalization or Buyers for Sale (the “Motion”) and, in support hereof, respectfully states as follows:

BACKGROUND

1. The petitions commencing the Debtors’ cases were filed on January 29, 2004 and April 12, 2004. These cases are now pending in this Court. The Debtors continue to operate their business as debtors-in-possession under sections 1107(a) and 1108 of the Bankruptcy Code.

2. On April 29, 2004, the Debtors and CapitalSource Finance entered into that certain Post-Petition Revolving Credit and Security Agreement (as amended, the “DIP Credit Agreement”), subject to the terms and conditions of which CapitalSource Finance agreed to make certain loans and other financial accommodations to the Debtors.

3. On April 30, 2004, this Court approved the terms and conditions of the DIP Credit Agreement and entered that certain Final Order Authorizing Debtors to Enter Into Post-Petition Financing Agreement and Obtain Post-Petition Financing Pursuant to Sections 105, 362 and 364 of the Bankruptcy Code, and Granting Liens, Security Interests and Superpriority Claims (the “Final DIP Financing Order”).

4. The Debtors are currently operating their businesses pursuant to that certain budget (the “Budget”) which was approved by CapitalSource Finance on or about September 22, 2004.

5. On October 7, 2004, the Debtors filed their Motion. A hearing on the Motion is presently scheduled for Wednesday, October 27, 2004 at 10:30 a.m.

LIMITED OBJECTION

6. By their Motion, the Debtors seek blanket authority to pay, in their discretion, due diligence fees up to a maximum total of \$500,000 to potential lenders for a recapitalization or potential buyers for a sale of the Debtors’ assets without any consideration in return for such payments. The Debtors believe that they need to pay such due diligence costs in order to attract the interest of “serious” buyers or recapitalization lenders and to facilitate the timely conclusion of a transaction on the best terms available. (Motion, ¶10.) Prior to any such payment, the Debtors have proposed to give notice and an opportunity to object to the Official Committee of Unsecured Creditors and Todd Garamella, an insider of the Debtors. (Motion, ¶13.)

7. CapitalSource Finance objects to the Debtors’ payment of any due diligence expenses of any prospective exit lender or prospective buyer because such expenses are simply not provided for in the Budget. In fact, the express terms of the DIP Credit Agreement prohibit the Debtors’ unilateral attempt to pay any expenses not provided for under the Budget absent a waiver from CapitalSource Finance. (See DIP Credit Agreement, §7.2.) Any attempt by the Debtors to pay such expenses without CapitalSource Finance’s consent would be a breach of the Budget and, therefore, would constitute an Event of Default under the DIP Credit Agreement and the Final DIP Financing Order.

8. Even if CapitalSource Finance was to consent to amend the Budget and the DIP Credit Agreement to provide for or permit such expenditures, the payment of such fees must be conditioned upon the issuance of a commitment from the purchaser or the recapitalization lender. It defies common sense for the Debtors’ estate to pay recapitalization lenders’ or purchaser’s due

diligence costs absent a commitment from such parties, as the payment of such costs for “window shopping” provides absolutely no benefit to the Debtors’ estates or their creditors.

9. In addition, CapitalSource Finance objects to the Debtors’ limited disclosure and approval procedures set forth in the Motion because such procedures deliberately exclude CapitalSource Finance, among others, from the process without any justification whatsoever. If any party should receive notice and an opportunity to object to the Debtors’ payment of due diligence fees of prospective recapitalization lenders or buyers, it is CapitalSource Finance, the Debtors’ DIP lender and the holder of a valid, perfected, first-priority security interest in and blanket lien upon all of the Debtors’ assets.

10. For the reasons stated above, CapitalSource Finance cannot consent to the relief requested in the Motion as presently proposed by the Debtors. CapitalSource Finance reserves all of its rights and remedies under the DIP Credit Agreement, the Final DIP Financing Order, and the DIP Loan Documents as well as the right to submit supplemental written objections to the Court with respect to the Motion and gives notice that it may call a representative of the Debtors to testify at any hearing on said Motion.

Dated: October 20, 2004

Respectfully submitted,

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UNITED STATES BANKRUPTCY COURT
DISTRICT OF MINNESOTA

In re:

Chapter 11 Bankruptcy

INTREPID U.S.A., INC.
INTREPID OF GOLDEN VALLEY, INC.
F.C. ACQUISITION CORPORATION,

Debtors.

BKY No.: 04-40416
BKY No.: 04-40462
BKY No.: 04-40418
Bky Nos. 04-41924 – 04-41988

UNSWORN CERTIFICATE OF SERVICE

I, Daniel J. McGarry, declare under penalty of perjury that on October 20, 2004, I served a copy of the LIMITED OBJECTION OF CAPITALSOURCE FINANCE LLC TO MOTION FOR ORDER AUTHORIZING DEBTORS TO PAY DUE DILIGENCE FEES TO POTENTIAL LENDERS FOR RECAPITALIZATION OR BUYERS FOR SALE by facsimile on the following entities:

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Dated: October 20, 2004